



Division of Remediation Support
Bureau of Enforcement and Investigations
401 East State Street, 5th Floor West
PO Box 028
Trenton, New Jersey 08625
Telephone: (609) 633-1464
Fax: (609) 633-1439

Effective 11/9/07
(Date NL signed certified mail)
Reply 12/3/07

CERTIFIED MAIL/RRR
(7005 1160 0000 3684 8920)

NL Industries, Inc.
5430 LBJ Freeway
Suite 1700
Dallas, Texas 75240-2697

RE: MARGARETS CREEK LEAD CONTAMINATION
Administrative Consent Order
EA ID #: NEA070001 - 434324

Dear Sir/Madame:

Enclosed you will find two copies of the final Administrative Consent (ACO) which will enable NL Industries to conduct, with the Department's oversight, all the remedial activities necessary for the Site. Please sign and return both copies to the Bureau of Enforcement and Investigations at the address above within fifteen days of receipt of this correspondence.

Additionally, as per N.J.A.C. 7:26C-7.2, the Remediation Funding Source required as per the Administrative Consent Order must be submitted upon submission of a signed ACO to the Department.

If you have any questions regarding the enclosed ACO, feel free to contact Michael A. Justiniano at (609) 633-1426.

Sincerely,

Ronald T. Corcory, Assistant Director
Oversight Resource Allocation Element

Enclosure

Oversight Resource Allocation Element
Bureau of Enforcement and Investigations
401 E. State Street, 5th Floor West
P.O. Box 028
Trenton, NJ 08625
Fax (609) 633-1439

IN THE MATTER OF

Old Bridge Twp Margarets Creek

AND

NL INDUSTRIES

:
: ADMINISTRATIVE CONSENT ORDER
:
:
:
:

EA ID # NEA070001 - 434324

This Administrative Consent Order is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "the Department" or "DEP") by N.J.S.A. 13:1D-1 through 19, the Solid Waste Management Act, N.J.S.A. 13:1E-1 through 91, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and duly delegated to the Assistant Director, pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The Margarets Creek/Laurence Harbor Sea Wall site occupies at least 60 acres off of Rt 35 and is also known as Block 1, Lots 54.11, 54.12, 50, and 49 on the Tax maps of Old Bridge Township, Middlesex County (hereinafter "the Site"). The Site, and all other areas to which any hazardous substances discharged on the Site have migrated, are collectively referenced hereinafter as "the Contaminated Site".
2. NL Industries, Inc., is a New Jersey Corporation with principal offices located at 5430 LBJ Freeway, Suite 1700, Dallas, Texas.
3. NL Industries, Inc., used battery plates from lead/acid storage batteries as the principal feed material for the blast furnace located at its plant in Perth Amboy, New Jersey.
4. In September 1972, the Department was advised that lead bearing waste material was being disposed of along the Laurence Harbor beach front on Raritan Bay.
5. By letter to the Department dated December 7, 1972, NL Industries, Inc. acknowledged that "slag which consists of non-recoverable low yield metallic waste from blast furnace and blast furnace rubble are disposed of by Liberty Trucking Company at their property in Madison Township, Route 35, New Jersey." Madison Township is now known as Old Bridge Township.

6. A portion of the Site known as Block 1, Lot 54.11 was proposed for acquisition by the State of New Jersey under the Green Acres Program. During the preliminary assessment phase of the Green Acres review process, historical aerial photos revealed the filling of approximately twenty acres of the Site in 1974.
7. On December 13, 2006, a limited site investigation was conducted to visually characterize fill material via excavation of test pits. Waste materials were evident in numerous locations across the surface of the site, including large quantities of what appeared to be shredded automotive battery casings and refractory brick and slag.
8. On March 14, 2007, the Department collected soil samples at the portion of the Site known as Block 1, Lot 54.11. Lead was detected at concentrations above the unrestricted use and restricted use Soil Cleanup Criteria (400ppm/600ppm) with a concentration range of 701 ppm to 146,000 ppm.
9. On May 23, 2007 the Department conducted further soil sampling at Block 1, Lot 54.11. Antimony was detected at concentrations above the unrestricted use and restricted use Soil Cleanup Criteria (14ppm/340ppm) with a concentration range of 17.8 ppm to 12,900 ppm. Arsenic was detected at concentrations above the unrestricted use and restricted use Soil Cleanup Criteria (20ppm/20ppm) with a concentration range of 23.6 ppm to 3,350 ppm. Lead was detected at concentrations above the unrestricted use and restricted use Soil Cleanup Criteria (400ppm/600ppm) with a concentration range of 647 ppm to 142,000 ppm. Finally, nickel was detected at a concentration 286 ppm above the unrestricted use Soil Cleanup Criteria (250 ppm) in one sample.
10. On July 24, 2007 the Department conducted its most recent round of soil sampling at Block 1, Lot 54.11. Antimony was detected at concentrations above the unrestricted use and restricted use Soil Cleanup Criteria (14ppm) with a concentration range of 19.2 ppm to 20.2 ppm. Arsenic was detected at a concentration of 24.5 ppm above the unrestricted use and restricted use Soil Cleanup Criteria (20ppm/20ppm) in one sample. Lead was detected at a concentration of 545 ppm above the unrestricted use ~~use~~ Soil Cleanup Criteria (400ppm) in one sample.
11. To cleanup and remove the discharges the Department has determined that it is necessary to conduct a Departmentally approved remedial investigation at the Contaminated Site in order to fully determine the nature and extent of the problem presented by the discharges. Upon completion of the remedial investigation, it will be necessary to implement a remedial action to address the discharges at the Site.
12. The substances referenced in the paragraph(s) above are hazardous substances pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11b.
13. NL Industries, Inc. is responsible for the discharges of hazardous substances at the Site which were discharged to the lands and waters of the State.
14. Pursuant to N.J.S.A. 58:10-23.11f., whenever any hazardous substance is discharged, the Department may, in its discretion, act to clean up and remove or arrange for the cleanup and removal of such discharge, or may direct any person in any way responsible for the hazardous substance to clean up and remove, or arrange for the cleanup and removal of the discharge.

15. By entering this Administrative Consent Order, NL Industries, Inc. neither admits to any fact, fault or liability under any statute or regulation concerning the condition of the Site nor waives any rights or defenses with regard to the site except as specifically provided in this Administrative Consent Order.
16. The scope of the investigation and remediation required by this Administrative Consent Order will include all contaminants at the above referenced Site, and all contaminants, which are emanating from or which have emanated from the Site.

ORDER

I. Remedial Investigation Requirements

17. Within [30] calendar days after the effective date of this Administrative Consent Order as set forth in paragraph 78 below (hereinafter, "the effective date of the Administrative Consent Order"), or as otherwise approved in writing by the Department, NL Industries agrees to submit to the Department a detailed Remedial Investigation Work Plan (hereinafter the "RI Work Plan") in accordance with N.J.A.C. 7:26E, including a schedule pursuant to N.J.A.C. 7:26E-4.2(b). NL Industries agrees to include in the RI Work Plan a baseline ecological evaluation pursuant to N.J.A.C. 7:26E-3.11 and all other work required by N.J.A.C. 7:26E-3.1 et seq., that the Department has not already approved for the site.
18. Within [30] calendar days after receipt of the Department's written comments on the RI Work Plan, or as otherwise notified in writing by the Department, NL Industries agrees to modify the RI Work Plan to conform to the Department's comments and agree to submit the modified RI Work Plan to the Department. The determination as to whether or not the modified RI Work Plan, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RI Work Plan conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send NL Industries written final approval of the RI Work Plan.
19. Upon receipt of the Department's written final approval of the RI Work Plan, NL Industries agrees to conduct the remedial investigation in accordance with the approved RI Work Plan and the schedule therein.
20. NL Industries agrees to submit to the Department a Remedial Investigation Report (hereinafter "RI Report") in accordance with N.J.A.C. 7:26E and the RI Work Plan and the schedule therein.
21. If upon review of the RI Report the Department determines that additional remedial investigation is required, the Department shall notify NL Industries of the additional work that is required. NL Industries agrees to submit to the Department another RI Work Plan and schedule for the additional work. Upon approval of the RI Work Plan for the additional required work, NL Industries agrees to conduct additional remedial investigation and submit another RI Report pursuant to the approved schedule.

22. Within [30] calendar days after receipt of the Department's written comments on the RI Report, or longer as authorized by the Department, NL Industries agrees to modify the RI Report to conform to the Department's comments and agree to submit the modified RI Report to the Department. The determination as to whether or not the modified RI Report, as resubmitted, conforms with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RI Report conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send NL Industries written final approval of the RI Report.

II. Remedial Action Requirements

23. Within [30] calendar days after receipt of the Department's written approval of the RI Report, NL Industries agrees to submit to the Department a Remedial Action Work Plan (hereinafter the "RA Work Plan") in accordance with N.J.A.C. 7:26E-6.
24. Within [30] calendar days after receipt of the Department's written comments on the RA Work Plan, or as otherwise approved in writing by the Department, NL Industries agrees to modify the RA Work Plan to conform to the Department's comments and agree to submit the modified RA Work Plan to the Department. The determination as to whether or not the modified RA Work Plan, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RA Work Plan conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send NL Industries written final approval of the RA Work Plan.
25. Upon receipt of the Department's written final approval of the RA Work Plan, NL Industries agrees to implement the approved RA Work Plan in accordance with the schedule therein.
26. NL Industries agrees to submit to the Department Remedial Action Reports (hereinafter "RA Reports") in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-6, the approved RA Work Plan and the schedule therein.
27. If, upon review of the RA Reports, the Department determines that additional remediation is required, NL Industries agree to conduct additional remediation as required by the Department including submission of additional workplans and reports, and schedules as applicable.
28. Within [30] calendar days after receipt of the Department's written comments on the RA Reports, or longer as authorized by the Department, NL Industries agrees to modify the RA Reports to conform with the Department's comments and agree to submit the modified RA Reports to the Department. The determination as to whether or not the modified RA Reports, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RA Reports conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send NL Industries written final approval of the RA Reports.

III. Additional Remedial Investigation and Remedial Action Requirements

29. If at any time that this Administrative Consent Order is in effect the Department determines that the prevailing standards in N.J.A.C. 7:26E are not being achieved or that additional remediation is required to protect the public health and safety and the environment, NL Industries agrees to conduct such additional remediation as the Department directs.

IV. Progress Reports

30. NL Industries agrees to submit quarterly progress reports which detail the status of NL Industries's compliance with this Administrative Consent Order to the Department in accordance with N.J.A.C. 7:26E-6.6(b). NL Industries agrees to submit the first progress report on or before the last calendar day of the fourth calendar month following the effective date of this Administrative Consent Order. NL Industries agrees to submit a progress report thereafter on or before the last calendar day of the month following the next three calendar months being reported. After the first year subsequent to the effective date of this Administrative Consent Order, NL Industries may request that the Department allow progress reports be submitted semi-annually or annually.

V. Project Coordination

31. NL Industries agrees to submit to the Department all documents required by this Administrative Consent Order, including correspondence relating to force majeure issues pursuant to Section X of this Administrative Consent Order, by delivery with an acknowledgement of receipt from the Department. The date that the Department executes the acknowledgement will be the date the Department uses to determine NL Industries's compliance with the requirements of this Administrative Consent Order for purposes of assessing penalties and availing itself of any other applicable remedies.
32. Within seven (7) calendar days after the effective date of this Administrative Consent Order, NL Industries agrees to submit to the Department the name, title, address and telephone number of the individual who shall be NL Industries's technical contact for the Department for all matters concerning this Administrative Consent Order and NL Industries agrees that this person is NL Industries's agent for the purpose of service for all matters concerning this Administrative Consent Order. In the event the Department determines that a meeting concerning the remediation of the site is necessary, the Department will provide notification to NL Industries's agent, identified in paragraph 57 below, of the date, time and place of such meeting. NL Industries agrees to ensure that the agent is available for and participates in such meeting.
33. Within seven (7) days after the effective date of this Administrative Consent Order the Department will identify the individual who will be the Department's contact for all matters concerning this Administrative Consent Order. Unless the Department otherwise directs in writing, NL Industries agrees to submit all payments and copies of all documents required by this Administrative Consent Order to the Department's contact.
34. NL Industries agrees to notify, both verbally and in writing, the Department's contact person identified pursuant to paragraph 33, above, at least fourteen (14) calendar days prior to the initiation of any field activities at the Site which are related to remediation, development or redevelopment.

35. The Department will consider a written request for an extension of time to perform any requirement in this Administrative Consent Order, provided that NL Industries submit any extension request to the Department two weeks prior to any applicable deadline to which the extension request refers.

VI. Remediation Funding Source and Remediation Funding Source Surcharge

36. NL Industries agrees to establish and maintain for the duration of this Administrative Consent Order a remediation funding source in an amount equal to the Department-approved estimate of the remediation costs related to compliance with this Administrative Consent Order, including all operation, maintenance and monitoring costs of all engineering and institutional controls, pursuant to N.J.A.C. 7:26E-8, used to remediate the Site, pursuant to N.J.A.C. 7:26C-7. NL Industries agree that the initial remediation funding source amount is \$ [].
37. NL Industries agrees to pay an annual remediation funding source surcharge if required to do so pursuant to N.J.A.C. 7:26C-7.8.

VII. Project Cost Review

38. Beginning three hundred sixty-five (365) calendar days after the effective date of this Administrative Consent Order, and annually thereafter on the same calendar day, NL Industries agree to submit to the Department a detailed review of all remediation costs expended by NL Industries to comply with this Administrative Consent Order, including:
- a) A detailed summary of all monies spent to date pursuant to this Administrative Consent Order;
 - b) The detailed estimated remediation costs required to comply with this Administrative Consent Order, including all operation, maintenance and monitoring costs; and
 - c) The reason for any changes from the previously submitted cost review.
39. At any time after NL Industries submits the first cost review pursuant to the preceding paragraphs NL Industries may request the Department's approval to reduce the amount of the remediation funding source to reflect the remaining remediation costs necessary to comply with obligations under this Administrative Consent Order. If the Department grants written approval to such a request, NL Industries may amend the amount of the then existing remediation funding source consistent with that approval.
40. If the estimated costs of meeting NL Industries's obligations in this Administrative Consent Order at any time increase to an amount greater than the remediation funding source, NL Industries agrees to within thirty (30) calendar days after receipt of written notice of the Department's determination, increase the amount of the then existing remediation funding source or provide an additional remediation funding source such that the total amount equals the Department's approved estimated cost.
41. If NL Industries remediates the Site to a restricted use remediation standard and NL Industries implements institutional and engineering controls, NL Industries shall maintain

the remediation funding source, pursuant to N.J.A.C. 7:26C-7, in an amount necessary to pay for the operation maintenance and monitoring of the engineering and institutional controls.

VIII. Oversight Cost Reimbursement

42. Within thirty (30) calendar days after receipt from the Department of a written summary of the Department's oversight costs, including all accrued interest incurred pursuant to paragraph 44, determined pursuant to N.J.A.C. 7:26C-9.3, NL Industries agrees to submit to the Department a cashier's or certified check payable to the "Treasurer, State of New Jersey" and submitted with the Department's Direct Oversight Cost Invoice, for the full amount of the Department's oversight costs, for the period invoiced in the Department's summary.
43. NL Industries agrees that its agreement here to pay the Department's oversight costs will continue after the Department's termination of this Administrative Consent Order as provided herein for those oversight costs that have accrued prior to that termination.
44. NL Industries also agrees to pay interest on the unpaid balance of oversight costs, beginning at the end of the thirty (30) calendar day period established in the preceding paragraph, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey.

IX. RESERVATION OF RIGHTS

45. The Department reserves the right to unilaterally terminate this Administrative Consent Order in the event that the Department determines that NL Industries has violated the terms of this Administrative Consent Order. Before the Department unilaterally terminates this Administrative Consent Order, the Department will notify NL Industries in writing of the obligation(s) which they have not performed, and NL Industries shall have thirty (30) calendar days after receipt of such notice to perform such obligation(s).
46. Nothing in this Administrative Consent Order precludes the Department from seeking civil or civil administrative penalties or any other legal or equitable relief against NL Industries for violations of this Administrative Consent Order. In any such action brought by the Department under this Administrative Consent Order for injunctive relief, civil, or civil administrative penalties, NL Industries may raise, among other defenses, a defense that NL Industries failed to comply with a decision of the Department, made pursuant to this Administrative Consent Order, on the basis that the Department's decision was arbitrary, capricious or unreasonable. If NL Industries are successful in establishing such a defense based on the administrative record, NL Industries shall not be liable for penalties for failure to comply with that particular requirement of the Administrative Consent Order. Although NL Industries may raise such defenses in any action initiated by the Department for injunctive relief, NL Industries hereby agrees not to otherwise seek review of any decision made or to be made by the Department pursuant to this Administrative Consent Order, except as provided in paragraph 56 of this Administrative Consent Order. Under no circumstances shall NL Industries initiate any action or proceeding challenging any decision made or to be made by the Department pursuant to this Administrative Consent Order.
47. This Administrative Consent Order shall not be construed to affect or waive the claims of federal or State natural resources trustees against any person for damages or injury to,

destruction of, or loss of natural resources, unless expressly provided herein, and then only to the extent expressly provided herein.

48. Except as otherwise stated in this Administrative Consent Order, nothing herein shall be construed as limiting any legal, equitable or administrative remedies which NL Industries may have under any applicable law or regulation. In any enforcement action the Department initiates pursuant to this Administrative Consent Order, NL Industries reserves any defenses which the Spill Compensation and Control Act, *Matter of Kimber Petroleum Corp.*, 110 N.J. 69 (1988) or their amendments, supplements and progeny allow.
49. Except as otherwise set forth herein, by the execution of this Administrative Consent Order the Department does not release NL Industries from any liabilities or obligations NL Industries may have pursuant to any other authority, nor does the Department waive any of its rights or remedies pursuant thereto.

X. Force Majeure

50. If any event specified in the following paragraph occurs which NL Industries believes or should believe will or may cause delay in the compliance or cause non-compliance with any provision of this Administrative Consent Order, NL Industries agrees to notify the Department in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measure taken or to be taken to minimize the delay, and the time required to take any such measures to minimize the delay. NL Industries agrees to take all necessary action to prevent or minimize any such delay.
51. The Department will extend in writing the time for performance for a period no longer than the delay resulting from such circumstances as determined by the Department only if:
- a) NL Industries has complied with the notice requirements of the preceding paragraph;
 - b) Any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of NL Industries; and
 - c) NL Industries has taken all necessary action to prevent or minimize any such delay.
52. The burden of proving that any delay is caused by circumstances beyond the control of NL Industries and the length of any such delay attributable to those circumstances shall rest with NL Industries.
53. "Force Majeure" shall not include the following:
- a) Delay in an interim requirement with respect to the attainment of subsequent requirements;
 - b) Increases in the cost or expenses incurred by NL Industries in fulfilling the requirements of this Administrative Consent Order;

c) Contractor's breach, unless NL Industries demonstrates that such breach falls within the above paragraphs; and

d) Failure to obtain access required to implement this Administrative Consent Order, unless denied by a court of competent jurisdiction.

XI. Penalties

54. NL Industries agrees to pay penalties for its violations of this Administrative Consent Order, or for its failure to implement and maintain institutional controls including by way of example, a deed notice or declaration of environmental restriction that are part of a remedial action implemented pursuant to the order, according to the amounts and conditions in N.J.A.C. 7:26C-10.

55. NL Industries agrees that its payment of a penalty pursuant to N.J.A.C. 7:26C-10 does not alter NL Industries's responsibility to complete any requirements of this Administrative Consent Order.

XII. Dispute Resolution

56. In the event a conflict arises between NL Industries and the Department, NL Industries may institute the Department's dispute resolution process at N.J.A.C. 7:26C-1.4.

XIII. General Provisions

57. NL Industries agrees that the person listed below is NL Industries's agent for the purpose of service for all matters concerning this Administrative Consent Order. Unless and until NL Industries provides the Department with the name, title, address and telephone number of NL Industries's new agent

[name, title, address and telephone number of NL Industries's agent]

58. In addition to the Department's statutory and regulatory rights to enter and inspect, NL Industries agrees to allow the Department and its authorized representatives access to all areas of the Site which NL Industries has access to, at all times, for the purpose of monitoring NL Industries's compliance with this Administrative Consent Order and/or to perform any remedial activities which NL Industries fails to perform as required by this Administrative Consent Order. NL Industries agrees that its agreement here to provide the Department with access will continue after the Department's termination of this Administrative Consent Order pursuant to paragraph 45, above.

59. NL Industries agrees to not construe any informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving NL Industries of its obligation to obtain written approvals as required herein.

60. NL Industries agrees to provide a copy of this Administrative Consent Order to each contractor and subcontractor retained to perform the work required by this Administrative Consent Order and agree to condition all contracts and subcontracts entered for the performance of such work upon compliance with the terms and conditions of this Administrative Consent Order. NL Industries agrees to be responsible to the Department for

ensuring that its contractors and subcontractors perform the work herein in accordance with this Administrative Consent Order.

61. Nothing in this Administrative Consent Order relieves NL Industries from complying with all other applicable laws and regulations. Compliance with the terms of this Administrative Consent Order shall not excuse NL Industries from obtaining and complying with any applicable federal, state or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by this Administrative Consent Order. This Administrative Consent Order shall not preclude the Department from requiring that NL Industries obtain and comply with any permits, and/or orders issued by the Department under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1 E-1 et seq., and the Spill Compensation and Control Act N.J.S.A. 58:10:23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this Administrative Consent Order if the terms and conditions of any such permit are more stringent than the terms and conditions of this Administrative Consent Order. Should any of the measures to be taken by NL Industries during the remediation of any ground water and surface water pollution result in a new or modified discharge as defined in the New Jersey Pollutant Discharge Elimination System ("NJPDES") regulations, N.J.A.C. 7:14A-1 et seq., then NL Industries agrees to obtain a NJPDES permit or permit modification from the Department prior to commencement of the activity.
62. All work plans, schedules, and other documents required by this Administrative Consent Order and approved in writing by the Department are incorporated herein and made a part hereof.
63. Upon the receipt of a written request from the Department, NL Industries agrees to submit to the Department all data and information, including technical records and contractual documents, concerning contamination at the site, including raw sampling and monitoring data, whether or not such data and information, including technical records and contractual documents, were developed pursuant to this Administrative Consent Order. NL Industries reserves its right to assert a privilege regarding such documents, but agree not to assert any confidentiality or privilege claim with respect to any data related to site conditions, sampling or monitoring.
64. NL Industries agrees to comply with this Administrative Consent Order, which shall be fully enforceable as an Order in the New Jersey Superior Court pursuant to the Department's statutory authority.
65. No modification or waiver of this Administrative Consent Order shall be valid except by written amendment to this Administrative Consent Order duly executed by NL Industries and the Department. Any amendment to this Administrative Consent Order shall be executed by the Department and NL Industries. The Department reserves the right to require the resolution of any outstanding violations of the applicable regulations or this Administrative Consent Order prior to executing any such amendment.
66. NL Industries waives their rights to an administrative hearing concerning the entry of this Administrative Consent Order.

67. This Administrative Consent Order shall be governed and interpreted under the laws of the State of New Jersey.
68. If any provision of this Administrative Consent Order or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Administrative Consent Order or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Administrative Consent Order shall be valid and enforced to the fullest extent permitted by law.
69. This Administrative Consent Order represents the entire integrated agreement between the Department and NL Industries concerning the site subject to this Administrative Consent Order and supersedes all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided herein.
70. Within thirty (30) calendar days after the effective date of this Administrative Consent Order, NL Industries agrees to record a copy of this Administrative Consent Order with the County Clerk, Middlesex County, State of New Jersey and agree to provide the Department with written verification of compliance with this paragraph which shall include a copy of this Administrative Consent Order stamped "Filed" by the County Clerk.
71. This Administrative Consent Order shall be binding, jointly and severally, on each party, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any party or of the facility or site shall alter party's responsibilities under this Administrative Consent Order.
72. NL Industries's document retention policy notwithstanding, NL Industries agrees to preserve, during the pendency of this Administrative Consent Order and for a minimum of ten (10) years after its termination, all data and information, including technical records, potential evidentiary documentation and contractual documents, in its possession or in the possession of NL Industries's divisions, employees, agents, accountants, contractors, or attorneys that relate in any way to the contamination at the site, despite any document retention policy to the contrary. After this ten year period, NL Industries may make a written request to the Department to discard any such documents. Such a request shall be accompanied by a description of the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents. Upon receipt of written approval by the Department, NL Industries may discard only those documents that the Department does not require to be preserved for a longer period. Upon receipt of a written request by the Department, NL Industries agrees to submit to the Department all data and information, including technical records and contractual documents or copies of the same. NL Industries reserve whatever rights they may have, if any, to assert any privilege regarding such data or information, however, NL Industries agrees not to assert any privilege or confidentiality claims with respect to any data related to site conditions, sampling, or monitoring.
73. NL Industries agrees to provide to the Department written notice of the dissolution of its corporate or partnership identity, the liquidation of the majority of its assets or the closure, termination or transfer of operations in accordance with the schedule set forth at N.J.A.C. 7:26B-3.2 prior to such action. Upon such notice, NL Industries agrees to submit a cost review pursuant to this Administrative Consent Order to the Department. NL Industries

agrees to also provide written notice to the Department of a filing of a petition for bankruptcy no later than the first business day after such filing. These requirements shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations. Upon receipt of notice of dissolution of corporate identity, liquidation of assets or filing of a petition for bankruptcy, the Department may request and, within fourteen (14) days of the Department's written request, NL Industries agrees to obtain and submit to the Department an additional remediation funding source pursuant to this Administrative Consent Order.

74. If NL Industries remediates the Site to a restricted use standard and NL Industries implements institutional and engineering controls, this Administrative Consent Order shall remain in full force and effect including the requirements to maintain a remediation funding source, and to pay an annual 1% surcharge of the total amount of the remediation funding source until the Department determines that the Site is remediated to the applicable unrestricted use standard.
75. If NL Industries remediates contaminated soil at the Site to the Department's unrestricted use soil standard and any other contaminated media to the applicable remediation standard, the requirements of this Administrative Consent Order shall be deemed satisfied upon the receipt by NL Industries of written notice from the Department stating that NL Industries has completed the remediation required by this Administrative Consent Order in accordance with N.J.A.C. 7:26E and has satisfied all financial obligations imposed by this Administrative Consent Order and therefore NL Industries does not need to continue to maintain a remediation funding source nor pay the annual 1 % surcharge, and that no further action is necessary at the Site. The written notice shall also state that the Administrative Consent Order is thereby terminated. Such written notice shall not relieve NL Industries from the obligation to conduct future investigation or remediation activities pursuant to Federal, State or local laws for matters not addressed by this Administrative Consent Order.
76. Except as provided in paragraph 63 above, NL Industries may assert a claim of confidentiality for any information submitted by NL Industries pursuant to this Administrative Consent Order, by following the Department's procedures in N.J.A.C. 7:26B-7.
77. NL Industries agrees to submit to the Department, along with two original copies of the Administrative Consent Order, each with the original signature of NL Industries, or its authorized representative, and documentary evidence, such as a corporate resolution or a certification by a corporate officer, that the signatory has the authority to bind NL Industries to the terms of this Administrative Consent Order, and proof that the remediation funding source has been established pursuant to N.J.A.C. 7:26C-7.
78. This Administrative Consent Order shall be effective upon the execution of this Administrative Consent Order by the Department and NL Industries.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: _____

BY: _____
Ronald T. Corcory, Assistant Director
Oversight Resources Allocation Element

NL Industries

Date _____

BY: _____
Signature

Print Full Name Signed Above

Title